

service.³

You claim that Motorola/Loral violated the Commission's ex parte rules by making ex parte presentations to Commission decision-making personnel pertaining to their Jointly Filed Comments ("Joint Comments") filed October 7, 1993, in the docketed proceedings. Although ex parte presentations are not prohibited in those proceedings, you claim that the presentations were "inextricably entwined" with the merits or outcome of the application proceedings and, therefore, were prohibited under Section 1.1208 of the Commission's rules, 47 C.F.R. §1.1208, which applies to restricted, adjudicatory proceedings. You allege that the very same matters raised in these Joint Comments, e.g., spectrum efficiency standards and stringent financial qualification standards, were raised by Motorola in its pending "Consolidated Petitions to Dismiss and/or Deny" the applications of its competitors for authority to construct and operate Radio Determination Satellite Service ("RDSS")/Mobile Satellite Service ("MSS") stations. You allege that the oral ex parte presentations made to various Commission personnel address "matters which go to the very essence of the various license applications" and represent a "blatant effort to violate the Commission's ex parte rules and the fundamental due process protections underlying them." You also assert that both ET Docket No. 92-28 and CC Docket No. 92-166 involve "competing claims to a valuable privilege" and thus should be subject to a prohibition on ex parte presentations under Sangamon Valley Television Corp. v. United States, 269 F.2d 221, 224 (D.C. Cir. 1959).

You request the initiation of hearing and/or show cause proceedings pursuant to section 1.1216(a) of the Commission's rules, 47 C.F.R. §1.1216(a), to determine whether Motorola and/or Loral should "be disqualified from further participation" in the above-mentioned proceedings or otherwise have their "claim or interest" in these matters dismissed. You also request that a public notice be issued indicating that all three pending proceedings are restricted under the ex parte rules. Responsive letters were filed by Motorola and you.

³ On April 24, 1991, satellite applications submitted by Motorola and Ellipsat Corporation ("Ellipsat") were accepted for filing and, on October 24, 1991, satellite applications submitted by AMCS Subsidiary Corporation, Constellation Communications, Inc., Ellipsat, Loral Cellular Systems, Corp., and TRW, Inc. were accepted for filing. See Public Notice "Satellite Applications Acceptable for Filing; Cut-off Established for Additional Applications," Report No. DS-1068, 6 FCC Rcd 2083 (1991) and Public Notice "Satellite Applications Acceptable for Filing," Report No. DS-1134, 6 FCC Rcd 6002 (1991).

For the reasons set forth below, we conclude that no impermissible ex parte presentations occurred. In addition, we do not believe it is necessary or appropriate to make either of the docketed Big Leo proceedings restricted under the ex parte rules.

The Commission has repeatedly stated that the mere pendency of a restricted adjudicatory proceeding, e.g., an application proceeding, does not preclude a party to that proceeding from submitting comments or otherwise participating in an informal rulemaking proceeding. See Report and Order in Gen. No. Docket 86-225, 2 FCC Rcd 3011, 3014 (1987) (a person is not prohibited in a non-restricted proceeding "from engaging in 'communications regarding 'general industry problems,' so long as they do not deal with the merits of the restricted proceeding.") (quoting Report and Order in Gen. Docket No. 78-167, 78 FCC 2d 1384, 1397 n. 21, quoting in turn, Report and Order in Docket No. 15381, 1 FCC 2d 49, 56-58 (1965)). Thus, a person is free "to pursue other legitimate interests before the Commission" provided that the pendency of these other matters is not used by that person "as a pretext for ex parte communications going to the merits or outcome of a restricted proceeding." Id.

The subjects raised in the Joint Comments -- spectrum efficiency, bi-directional transmissions, coverage, and financial qualification standards -- do not address the merits of specific or individual applications and, therefore, are properly categorized as addressing "general industry problems," e.g., the amount of spectrum that should be allotted for this new service, the technical and financial standards that should govern the industry as a whole. They are not directed at the merits of the individual applicants, such as Motorola, Constellation, or Ellipsat, but rather to the applicants as a class.

We recognize that the resolution of these matters in the docketed proceedings will have an impact on the pending applications. This, however, is the case in any rulemaking proceeding relating to a service for which applications have already been filed. And, as recognized by the Commission in prior instances in which rulemakings were related to pending applications, this does not and should not render improper ex parte presentations regarding the policy issues raised in the rulemaking proceedings.⁴ We also

⁴ For example, bi-directional use of the frequencies 1610-1626.5 MHz, which you argue relates to the pending applications, is one of the subjects explicitly raised by the Commission in ET Docket No. 92-28. See 7 FCC Rcd at 6418.


⁶ See, e.g., Amendment of Parts 2.22 and 25 of the Commission's Rules to Allocate Spectrum for and To Establish Other Rules and Policies Pertaining to the Mobile Satellite Service for

believe that the general policy questions of spectrum, licensing and service rules for Big LEOs are clearly distinct from whether

specific, applications should be granted. Accordingly, we find that oral ex parte presentations by Motorola/Loral on the former set of issues were permissible under our rules.

For similar reasons, we find that the docketed proceedings do not involve conflicting claims to a valuable privilege requiring a further prohibition on ex parte presentations under Sangamon Valley. Indeed, under our current rules, Sangamon-type proceedings are generally limited to allotment proceedings involving FM and television channels. See 47 C.F.R. §1.1208(c)(2); Notice of Proposed Rulemaking in Docket 86-225, para. 53, 51 Fed. Reg. 26,278 (July 22, 1986). Further, to ensure that the public is aware of what ex parte rules to follow, we state at the outset of rulemakings what ex parte rules apply. See id. We clearly stated that the rulemaking proceedings in Docket No. 92-28 would be subject to procedures for non-restricted proceedings and, consistent with the policy reflected in our rules regarding Sangamon-type proceedings, we see no reason to alter that determination.

Sincerely,



Renée Licht
Acting General Counsel

cc: Philip L. Malet, Esq.
Alfred Malet, Esq.
Pantelis Michalopoulos, Esq.
Steptoe & Johnson
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036

Warren Y. Zeger, Esq.
Cheryl Lynn Schneider, Esq.
COMSAT Corporation
6560 Rock Spring Drive
Bethesda, Maryland 20817

the Provision of Various Common Carrier Services (Tentative Decision), 6 FCC Rcd 4900, 4916 (1991) and Inquiry into the Development of Regulatory Policy in regard to Direct Broadcast Satellites (Notice of Proposed Policy Statement and Rulemaking), 86 FCC 2d 719, 754 (1981).

STAMP IN**PCS ACTION, Inc.****1200 19TH STREET, NW • 7TH FLOOR • WASHINGTON, DC 20036 • (202) 861-2957 • FAX: (202) 861-3963**

April 21, 1994

HAND DELIVER

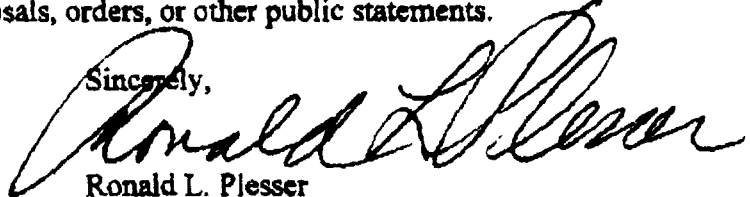
William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, Room 202
Washington, D.C. 20554

Re: GEN Docket No. 90-314
Advanced Cordless Technologies, Inc.
Petition for Reconsideration

Dear Mr. Caton:

This letter is to respond to the allegations made by Advanced Cordless Technologies, Inc. ("ACT") in its Petition for Reconsideration of the above-referenced docket concerning PCS Action, Inc. Specifically, ACT has accused PCS Action of making ex parte contacts on behalf of the three 2 GHz PCS pioneer's preference holders.¹ ACT's allegations are incorrect. At no time has PCS Action, Inc. made a communication to the Commission or its staff, ex parte or otherwise, related to the merits of the pioneer's preference process, the merits of any pioneer's preference requests, or the Commission's pioneer's preference rulemaking proposals, orders, or other public statements.

Sincerely,



Ronald L. Plesser
Counsel for PCS Action, Inc.

cc: Gene Bechtel, Esq.
Andrew S. Fishel, Esq.
David Siddall, Esq.

¹ Petition For Reconsideration By Advanced Cordless Technologies, Inc., GEN Docket No. 90-314, at 22 & Appendix B (dated March 7, 1994).